

PLANNING AND ZONING COMMISSION

August 2, 2011  
7:30 pm  
Council Chambers

ROLL CALL

Commissioners Present:	Davis, Huddleston, Loyd, McDowell, Wescott, Woolery, Vice-Chairperson Romine and Chairperson Harris	
Commissioners Absent:	Best	
Staff Present:	Jim Lawson	Director of Planning and Development
	Joel Hornickel	Senior Planner
	William Duston	City Attorney
	Sonja Paden	Office Assistant II
Others Present:	Cris Bohinc	Aldерwoman

1. **Approve Agenda.**  
Recommended Action: Approve the format of the August 2, 2011 agenda.

**MOTION:**

Motion by Vice-Chairperson Romine and seconded by Commissioner Loyd, and unanimously carried to approve the format of the August 2, 2011 agenda.

PUBLIC COMMENTS

None.

REGULAR AGENDA ITEMS

2. **Approve Minutes.**  
Recommended Action:
  - A) Approve the minutes of the June 7, 2011 Joint Comprehensive Plan Steering Committee meeting;
  - B) Approve the minutes of the June 7, 2011 study session;
  - C) Approve the minutes of the June 7, 2011 regular meeting.

**MOTION:**

Motion by Commissioner Wescott and seconded by Vice-Chairperson Romine and unanimously carried to approve the minutes of the June 7, 2011 Joint Comprehensive Plan Steering Committee meeting, the June 7, 2011 Planning and Zoning Commission study session and the June 7, 2011 Planning and Zoning Commission regular meeting as presented.

OLD BUSINESS
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3. Request for a Municipal Code Amendment to Appendix A, Sections 400.040, 405.030, 405.040 and 410.040 Pertaining to Uses Permitted and Special Uses.  
Project No. 11-12.1 (11-01200001)  
Applicant: City of Branson

Mr. Hornickel presented the staff report as filed with the Planning Department.

Chairperson Harris asked if any of the Commissioners had any comments or questions for staff.

Commissioner McDowell suggested the word “large” be removed from the “department store” definition.

Mr. Hornickel stated staff was trying to cover the entire range of retail establishments. He stated the term department store could be removed thus reinforcing the commission’s earlier request to combine all retail type businesses as general retail.

Chairperson acknowledged the suggestion and thanked Commissioner McDowell. He asked if any of the other Commissioners had any comments.

Vice-Chairperson Romine asked if the display of a ware’s price and name was the same as advertising content.

Mr. Lawson stated staff had been trying to limit any signage within the display. He agreed subsections “h” and “i” were similar and could be combined.

Chairperson Harris stated the redundancy may not be a bad thing, as it may be better interpreted by a code officer.

Mr. Lawson stated if a sign included wording such as “Spring Sale” then it would be considered advertising.

Commissioner Loyd asked how the new code for displaying of wares would affect the downtown.

Mr. Hornickel stated the proposed changes were only for C commercial districts and, since the downtown had its own zoning district, it would not be included.

Commissioner Davis asked what the meaning of a building’s frontage was.

Mr. Hornickel stated it referred to the extent of a building’s façade.

Mr. Lawson added the issue had mainly come from suites, so the code would only allow for businesses to display their wares within the limits of their suite.

Commissioner Davis stated he did not get that from the wording, but now understood.

Mr. Hornickel stated that had been the reason staff felt it important to propose the additional text and graphics to help further explain the topic.

Commissioner Davis asked how staff arrived at a distance of one hundred and fifty feet (150') inside of which the display of wares within a parking lot were not allowed. He stated it seemed like a large distance and may be too limiting.

Mr. Lawson stated they had gone to the new and old Wal-Mart locations to measure and count rows. He added, since it would require a Special Use Permit and if the applicant had less than one hundred and fifty feet (150'), it could be dealt with.

Chairperson Harris asked if "years" could be changed to "time" within "D" of Section 405.040 to make it less restrictive. He then asked if the definition of schools could be modified by eliminating "elementary or secondary" because it seemed too limiting.

Mr. Lawson suggested adding a period after "agencies" and removing the remaining portion of the sentence.

Commissioner Wescott asked how displays of wares were currently being dealt with.

Mr. Lawson stated it was only partially covered under the sign code. He stated it had been an ongoing battle with business owners to get their merchandise pushed back from the road. He added they did not want to establish our community with the look of a county fair.

Commissioner Wescott asked if the businesses that would be affected by this code change were involved at all in the process.

Mr. Lawson stated staff would contact each owner after the changes were approved. He added a few knew the changes were being proposed, but they had not gone to each T-shirt shop owner.

Commissioner Wescott asked if the applicant for a previously approved museum would be required to come back to the Commission for a change in what they were going to display.

Mr. Hornickel stated they would not unless the Commission had made a special condition for that particular museum to come back upon a change of subject.

Commissioner Davis stated he felt special uses were most appropriate for newly built buildings. He stated if a special use had been approved for a new property then it should be able to stay with that property and never taken away. He added his concern was for when a property had been built for one use and was redone for a different use requiring a new Special Use Permit. He stated it becomes more difficult to review parking, ingress and egress properly for pre-existing buildings approved for a different use. He stated this was where the Special Use Permit was remiss.

Commissioner Wescott stated his question had been more to clarify how that process worked to make sure museums were not being added to the list when they did not necessarily need to be.

Chairperson Harris asked if any of the Commissioners had any other questions of the staff; there was no response. He then asked if there was anyone present who wished to speak in regards to the item.

Mr. Dimitrios Tsahiridis approached and asked if his business's display would be required to be back one hundred and fifty feet (150') from the road.

Mr. Lawson stated the one hundred and fifty feet (150') distance would be allowed by right and any distance less than that would require a Special Use Permit.

Mr. Tsahiridis stated every time he advertised a building for rent in Branson, he received phone calls stating they were not interested because the city was so difficult. He asked why we needed to put rules on this. He added one hundred and fifty feet (150') looked ridiculous and was unfair. He asked if he would be able to put advertising specials out.

Mr. Lawson stated he was able to advertise and use marquees as part of the sign ordinance.

Mr. Tsahiridis stated we were losing a lot of business in town and should consider revising the sign code.

Chairperson Harris asked if there was anyone else present who wished to speak in regards to the item.

Mr. Mark Weisz approached and stated there was so much he liked about the changes. He stated "C" and "D" under Section 405.040 were a huge improvement, but he suggested the word "any" be changed to "some". He stated many theaters also included OPC booths and they would not be able to exist any longer with this change. He asked Mr. Lawson to comment.

Mr. Lawson stated there was no flexibility and they were only referring to a building having one principle use.

Mr. Hornickel stated OPC booths were permitted uses.

Mr. Weisz stated he thought they still required a Special Use Permit, so he now understood and agreed with the statement. He agreed with Mr. Tsahiridis that one hundred and fifty feet (150') seemed rather arbitrary. He said he would be okay with stating a Special Use Permit would be required if the display was within one hundred and fifty feet (150') of a road. He stated he would not be okay if it stated a Special Use Permit would be required and the display must be more than one hundred and fifty feet (150') from a road. He stated many buildings in Branson did not have one hundred and fifty feet (150') available.

Commissioner Wescott stated he understood it to mean a Special Use Permit would be required because you would want something further from your building than what was required. He added the condition would then be that you cannot have anything within one hundred and fifty feet (150') of a road.

Mr. Hornickel stated if a business did not have the luxury of one hundred and fifty feet (150') then they would be encouraged to keep the display of their merchandise out of their parking lot and within the ten feet (10') of their building.

Mr. Weisz stated being able to see a store's items builds sales, thus sales tax. He stated one hundred and fifty feet (150') was more than enough distance, if safety was the concern. He stated a smaller distance would be better to involve more businesses than just Wal-Mart.

Chairperson Harris asked if there was anyone else present who wished to speak in regard to the item.

Ms. Cris Bohinc approached and asked for clarification of the definition for wares.

Mr. Lawson stated another word for wares was products. He stated certain businesses along Highway 76 did not sell race cars, but they were instead just displays and thus not covered by the definition.

Ms. Bohinc asked for clarification if the code change would prohibit those things.

Mr. Lawson stated it would not because those items were not those business's products.

Ms. Bohinc stated she had misunderstood and just wanted to clarify.

Chairperson Harris asked if there was anyone else present who wished to speak in regards to the item; there was no response. He asked again if there were any further comments or questions by the Commissioners.

Commissioner Wescott asked if a theater's only option would be to submit a Planned Development to also operate an amusement or if they could be approved for both.

Mr. Lawson stated a couple months earlier an applicant wanted an amusement and to also keep their approved theater use. He stated a Special Use was a special permit to do a specific thing and if they no longer wanted to do what their property was approved for then they had to void their previous use and get a new approval.

Commissioner Wescott asked if it was possible for that property to have more than one Special Use, if the owner thought they could support them.

Mr. Lawson stated if they wanted to add an additional Special Use then they would have to come in and amend their existing Special Use Permit.

Mr. Duston stated part of their record was Section 405.040 and the six points listed. He stated if they determined those requirements to be met then they would go back to "B" of the section and determine if additional conditions would then be needed. He added they had that authority, as long as the item met the six criteria.

Chairperson Harris asked if there was anyone else present who wished to speak in regards to the item; there was no response. He asked again if there were any further comments or questions by the Commissioners.

Commissioner Huddleston asked how the nursery set up in front of the Apple Market across the street during the spring was permitted, as they did not have one hundred and fifty feet (150').

Mr. Hornickel stated they currently apply for a Special Event for those occasions. He added they were located in the downtown zoning district and the codes changes would not affect them.

Commissioner Huddleston stated it was a bad example, but Mr. Weisz had brought up the other example of the nursery located on Highway 76. He asked what that person would do.

Mr. Lawson stated they would need to move their merchandise back.

Commissioner Huddleston stated they probably did not have one hundred and fifty feet (150').

Mr. Lawson stated they would then fall into the other criteria of not putting it in a parking space, but instead next to their building. He stated they were not allowing them to display their items, but they did need to move them back.

Commissioner Huddleston asked if they were trying to regulate or direct items away from the roadway.

Mr. Lawson stated that was correct. Mr. Lawson stated some businesses put their merchandise in their windows to be displayed. He stated through working with the Board, they were trying to achieve a different look on the major roadways.

Commissioner Huddleston asked if it was a safety issue or an aesthetic issue.

Mr. Lawson stated it was both.

Commissioner McDowell asked how that property was able to have their display to begin with.

Mr. Lawson stated it had never been regulated.

Commissioner McDowell stated the change would basically put them out of business because they did not have the one hundred and fifty feet (150').

Mr. Lawson stated they were not putting them out of business, but they would not be able to display the items as they were currently were. He stated businesses did not have to put their items out at the street in order to stay in business.

Commissioner Huddleston asked if they would be able to come in and negotiate the distance from the road for their displays.

Mr. Lawson stated they would be able to establish an area for their displays.

Commissioner Huddleston asked how it would be kept from becoming a good ole boy process of giving a sweetheart deal to preferred businesses.

Mr. Lawson stated they would come before the Commission for their request then decide where the open display area would be.

Chairperson Harris asked again if there were any further comments or questions by the Commissioners.

Commissioner Woolery asked if this change would affect the Auto Museum's displays.

Mr. Hornickel stated they had a Special Use Permit that gave them the right to have a specific amount of cars displayed within the front portion of their property. He added these code changes would not affect their business.

Mr. Weisz stated Kelly Kennedy was the person who owned the nursery and the property was still owned by the Muldenhower family. He stated the property looked so much better with the greenery and they would not be able to put their items within the building because they would die. He added the code change would put Kelly Kennedy out of business. He stated he had encouraged him to meet with the city before he opened to make sure he could operate his business. He stated there was no safety issue and it was an improvement to the town. He added it would be a shame to not allow them to continue.

Commissioner Huddleston stated he would not be put out of business, but be required to get a Special Use Permit to display his items.

Mr. Weisz stated he understood the changes to mean he could not display anything within one hundred and fifty feet (150') from the road.

Mr. Lawson stated, even though it was a pretty use, it would probably be a short-term use and developed as something else later. He stated the user would need to come in for a Special Use Permit for their merchandise on that property, as opposed to the city letting anyone put anything wherever they wanted.

Mr. Weisz asked how the current ordinance would allow this property owner to ask for a Special Use Permit.

Mr. Hornickel stated there was no delineated parking within the property. He added within the current code any use not listed would be required to obtain a Special Use Permit to operate. He stated the Commission could then determine the area of display within the property and establish an amount of time to allow the use.

Mr. Lawson stated they were trying to create a level playing field. He stated, if someone wanted to open a nursery, they would have to have parking and landscape and make a large investment in a property. He added this person simply set up his business without any of that. He stated he did not feel it was a good example of what the code changes were trying to achieve because he hardly met any of the city's requirements anyway.

Mr. Weisz stated he recognized that and that was why he encouraged him to meet with the city. He added he hoped they would be able to stay open after the proposed changes.

Chairperson Harris stated, when many conditions were included, they try to be very flexible with the individuals and applicants. He stated he hoped they could continue that trend. He added he hoped the final wording in the proposed changes allowed for that flexibility to deal with the specific cases. He stated the property under discussion did have many difficulties, but it had visually enhanced that area.

Commissioner Loyd suggested the one hundred and fifty foot (150') distance was pushing the margin and a smaller amount should be considered.

Commissioner Wescott asked if a percentage of distance from the right-of-way to the front of their building could be used instead to even the playing field. He added there should be a minimum distance to the road as well to take care of any safety issues. He stated this would also eliminate the sweetheart deals.

Commissioner Loyd suggested for staff to come up with a something other than a flat one hundred and fifty feet (150').

Chairperson Harris stated he would go along with that and he liked the idea of percentages much better. He added more investigation was needed for number thirty one (no. 31) under uses permitted. He reminded the Commissioners the information had been added to their packets a little later for some of them, so they did not get a chance to review it fully.

Commissioner Wescott asked for clarification of a building's frontage if not perpendicular to a road.

Mr. Hornickel recited the definition of frontage from Section 400.040 of the code.



Mr. Lawson stated if a suite was located on a corner, they could use both sides for their displays. He added if a side did not have a doorway then it would not be considered a frontage to the building.

Chairperson Harris asked if there was anyone else present who wished to speak in regards to the item.

Mr. Victor Victor approached and asked what the Walgreens on Gretna would be allowed.

Mr. Lawson stated one hundred and fifty feet (150') would not matter because they would go to the first example of displaying their merchandise within ten feet (10') along both sides of their building.

Mr. Victor asked if a business would have to display their merchandise more than one hundred and fifty feet (150') from both roads, if located on a corner, if the proposed codes changes were approved.

Chairperson Harris stated they would only if they wanted to have their display located within their parking lot.

Mr. Lawson stated they would come to the Commission and state they had two separate areas for designated outside display areas.

Mr. Tsahiridis approached and stated the changes were ridiculous because ninety-five percent (95%) of the properties on Highway 76 were located maybe twenty-five feet (25') from the highway and he did not understand why they were bothering with it. He added drivers on the highway did not pay attention to whether or not they cut their grass. He stated everywhere else in the country allowed displays and Branson, Missouri was trying to be different. He stated he knew there were rules and policies to follow, but it sounded like Russia. He asked for the Commissioners to not try and put them out of business.

Commissioner Wescott stated there was work to be completed on the one hundred and fifty feet (150'). He stated they were getting totally hung up on the one hundred and fifty feet (150'), but the other discussion for displays within ten feet (10') of a building seemed reasonable. He added the ten foot (10') option had a really good set of details that permitted displays and thus applicants would not have to come in for a permit. He stated they simply needed to clean up some of the exceptions.

Chairperson Harris asked if there was anyone else present who wished to speak in regard to the item.

Mr. Weisz approached and stated he just read the definition for frontage ten to twelve (10-12) times and, as a realtor, he should have known what it meant. He recited the definition then stated he could not figure it out and would probably never be able to figure it out. He stated there had to be a better definition.

Commissioner McDowell stated, because it referred to it as the building's frontage, it would only refer to the front of a business's suite or suites.

Mr. Lawson stated that was correct.

Mr. Weisz stated he understood it when it was said, but when he read it, it was not there.

Chairperson Harris stated it may need some clarity.

Chairperson Harris asked if there was anyone else present who wished to speak in regards to the item; there was no response. He then asked again if there were any further comments or questions by the Commissioners; there was no response. He entertained a motion.

**MOTION:**

Motion by Vice-Chairperson Romine and seconded by Commissioner Wescott to postpone Resolution 11-12.1 until the September meeting.

AYES: Davis, Huddleston, Loyd, McDowell, Wescott, Woolery,  
Vice-Chairperson Romine and Chairperson Harris.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Best.

Motion to postpone Resolution 11-12.1 carried with an 8-0 vote.

<b>PUBLIC HEARING AGENDA ITEMS</b>
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4. Request for a Special Use Permit to Operate a Farmers Market and Swap Meet at  
2855 W. Highway 76, Branson, Missouri.  
Project No. 11-1.6 (11-00100006)  
Applicant: Dimitrios Tsahiridis

Mr. Hornickel presented the staff report as filed with the Planning Department.

Chairperson Harris asked if there were any current permits for a farmers market or swap meet in the city.

Mr. Hornickel stated there were not.

Mr. Victor stated the information was incorrect and they had two public restrooms, one of which was in the back building shown in the presentation. He added both pads would have electrical outlets that people would be able to plug into.

Chairperson Harris asked if any of the Commissioners had any comments or questions of staff.

Commissioner McDowell asked if the current amount of parking would be sufficient for what had been proposed.

Mr. Hornickel stated they did not have exact parking counts available because they did not have up-to-date knowledge of the existing uses on the property. He added the twenty-five (25) proposed vendor spaces would require twenty-five (25) parking spaces and any patrons would require even more. He stated there would therefore more than likely be a deficiency.

Commissioner McDowell asked if a swap meet would be a permitted business then asked if they would need to receive a business license for it.

Mr. Hornickel stated they would.

Mr. Lawson stated he was right and that was why staff recommended denial of the use. He stated it was not a well-thought-out use of the property.

Commissioner Wescott asked if a farmers market could be permitted at this property.

Mr. Hornickel stated they may opt for a special event permit if they wanted to further pursue a farmers market. He stated staff could not recommend a special use permit for a swap meet and a farmers market on the property.

Commissioner Woolery asked if the State Statute concerning farmers markets had any limitations on what commodities a farmer could sell at a farmers market.

Mr. Hornickel stated his understanding was it had to be something grown on a farmer's property. He stated that if it was something made, such as crafts, then it would not be allowed

Mr. Duston stated staff did not have that statute in front of them for review to give him a definite answer to his question.

Chairperson Harris asked if any of the Commissioners had any other comments or questions of staff.

Commissioner Davis asked how these situations would be managed for health code issues.

Mr. Duston stated the city would have to work in conjunction with the Taney County Health Department.

Commission Davis asked if the health department would then make visits to these 'businesses,' or whatever the term was for them, to try and make sure there was reasonable public safety.

Mr. Duston stated he was making an assumption that would be the plan.

Ms. Bohinc approached and stated she ran the farmers market downtown and it did have to go through the health department. She added they were able to sell items that were grown, but not salsas or jellies for sanitation reasons. She stated honey was the only allowed canned product. She stated they were required to get a permit from the health department when they started.

Chairperson Harris asked if any of the Commissioners had any comments or questions of staff; there was no response. He then asked if there was anyone present who wished to speak in regards to the item.

Mr. Tsahiridis approached and stated staff had gotten it all wrong. He stated they had eleven restrooms on the property and two public. He stated they had more than an acre and a half in the back for the vendors to park their trucks. He asked if anyone had been a farmer before; there was no response. He stated he had grown up on a farm and they just applied for a grant to have the market inside. He said they had plenty of parking. He stated the days were wrong and they were supposed to be Friday, Saturday and Sunday. He stated he drives up to Springfield to buy vegetables and honey and did not understand how they could do it and he could not.

Chairperson Harris stated the issue was not with the farmers market, but with the swap meet. He added separating those issues would be huge for them.

Mr. Tsahiridis stated he was willing to separate them.

Chairperson Harris asked if he would be willing to modify his application to indicate only a farmers market dealing with produce grown by Missouri farmers only.

Mr. Tsahiridis stated he was.

Mr. Lawson stated they would need to come back next month if they were to amend their application because he was not comfortable that all of the details were figured out.

Chairperson Harris stated more specifics were needed for a farmers market. He added the swap meet people could start selling items within his currently available spaces.

Mr. Hornickel stated they would be required to get business licenses through the finance department before proceeding.

Mr. Tsahiridis stated was fine. He stated farmers markets needed tables to put their items on and asked how else they would do that.

Mr. Hornickel stated farmers were typically responsible to set up their own stands, and they lined up every Saturday morning to do so.

Mr. Tsahiridis stated was how they wanted to do it also.

Mr. Lawson stated it would be for only three (3) months a year.

Mr. Tsahiridis stated it would need to be when vegetables were available.

Chairperson Harris stated they could change the dates if they modified their application.

Commissioner Huddleston asked, if the swap meet was moved indoors and if only Missouri-grown produce was outside, would it not already be permitted.

Mr. Hornickel stated was correct because they could not have any regulations against Missouri farmers to sell their produce.

Mr. Tsahiridis asked if he could go ahead and let them use the property.

Commissioner Loyd stated he thought it could be limited to only one farmer per property.

Mr. Duston stated he had not looked at the Statute in question.

Chairperson Harris stated there was a specific Statute Mr. Duston would need to review before a decision could be made on the request. He added he may not need a Special Use Permit.

Mr. Tsahiridis asked when he could check with Mr. Duston.

Mr. Duston told him to call his office anytime.

Mr. Victor asked if there were any specific recommendations they could address.

Chairperson Harris asked if they should have the applicant withdraw their application or if they should vote to turn down the request as is.

Mr. Lawson stated they could do it either way, but the best way would be to have the applicant withdraw their application.

Mr. Tsahiridis stated he would withdraw his application then asked if he could have his four hundred and fifty dollars (\$450) back.

Mr. Lawson stated he could not.

Mr. Duston stated it would be best to postpone the item so he could research the Statute and report back next month.

Chairperson Harris asked if any of the Commissioners had any other questions of the applicants; there was no response. He then asked if there was anyone else present who wished to speak in regards to the item.

Mr. Weisz approached and stated he was extremely supportive of the farmers market, and was glad to hear they were against the swap meet because they were ugly and would devalue the area.

Chairperson Harris asked if anyone else had any other comments or questions.

Commissioner Loyd stated the applicants should have known the staff's recommendation and should have answered their questions ahead of the meeting.

Mr. Victor stated he gave the Zoning Department everything they had requested.

Mr. Hornickel stated Mr. Victor had been working with Tara Norback and they had seen the packets when they went out in July. He added staff did not receive any correspondence after they received their packet.

Mr. Victor asked what email had been used when the packets were sent out.

Mr. Hornickel stated it was the one provided on the application.

Mr. Tsahiridis stated he did not use that email address.

Mr. Hornickel stated it was the one provided, though.

Chairperson Harris stated there had been a communication difficulty. He asked again if there were any further comments or questions by the Commissioners; there was no response. He entertained a motion.

**MOTION:**

Motion by Commissioner Davis and seconded by Vice-Chairperson Romine to postpone Resolution 11-1.6.

AYES: Davis, Huddleston, Loyd, McDowell, Wescott, Woolery,  
Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: Best.


Motion to postpone Resolution 11-1.6 passed with an 8-0 vote.

<b>COMMISSIONER &amp; STAFF REPORTS</b>
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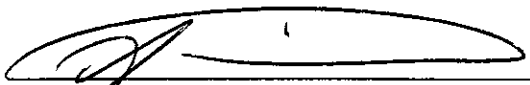
None.

ADJOURNMENT
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Motion by Commissioner Wescott and seconded by Commissioner Woolery, and unanimously carried to adjourn the meeting at 9:10 p.m.

  
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Clark Harris, Chairperson

9-6-11  
Date

  
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Joel Hornickel, Senior Planner

9/7/11  
Date